

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,	*
	*
Complainant,	*
	*
vs.	* CASE NUMBER 2:06-cr-00205-WHA-CSC
	*
SEBASTION K. SMITH, JR, and	*
COURTNEY FLOWERS,	*
	*
Defendant.	*

**OBJECTION TO PRESENTENCE REPORT**  
**OBJECTION TO USE OF STATEMENT OF DEFENDANT**

**COMES NOW** the Defendant, through his counsel of record, and objects to the pre-sentence report and objects to the use of statements given by him to the probation officer, as follows:

The presentence officer calculated the base offense level as 14 because Mr. Flowers is said to be a “prohibited person”. The report states,

13. **Base Offense Level:** Pursuant to USSG §2K2.1(a)(6), the base offense level is 14 if the defendant was a **prohibited person** at the time of the commission of the offense. The defendant **was an unlawful drug user** and was a prohibited person as defined at 18 U.S.C. § 922(g)(3). gives notice of his intent to change his plea to one of guilty and gives notice of his desire to enter such plea before a U.S. Magistrate Judge, instead of a U.S. District Court Judge.

The evidence that Mr. Flowers was “an unlawful drug user” comes from an interview that Mr. Flowers had with the probation officer. At the time of the interview Mr. Flowers was not warned that what he said could be used against him, and especially that it could be used against him to enhance the base level of the offense. Other than the statement of Mr. Flowers, there does not appear to be any evidence his alleged drug use was “contemporaneous” with the offense. See U.S. v. Bennett, 329 F.3d 769, 778 (10th Cir. 2003) and U.S. v. Edmonds, 348 F. 3d 950, 953 (11th Cir. 2003).

For these reasons, Mr. Flowers objects to being considered as a prohibited person and requests that his base offense level be lowered to 12, pursuant to USSG §2K2.1(a)(7).

s/ Everett M. Urech

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I have this date delivered a copy of the foregoing to the United States Attorney, Middle District of Alabama, Criminal Division, by electronic filing on the 25th day of January, 2007.

s/ Everett M. Urech

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Of Counsel